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WESTERN DISTRICT OF WASHINGTON
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07-CV-00809-CMP

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WIZKIDS, INC., a Delaware corporation,

Plaintiff,

v.

WIZARDS OF THE COAST, INC.,
a Washington corporation,

Defendant.

C 07-0809 MJP

Civil Action No.

COMPLAINT FOR
DECLARATORY JUDGMENT

Plaintiff WizKids, Inc. ("WizKids"), for its Complaint against Defendant Wizards of the Coast, Inc. ("WOTC") herein, alleges as follows:

NATURE OF THE ACTION

1. This action is based on the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202. By this action, WizKids seeks a declaratory judgment of patent non-infringement and invalidity under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, and other relief as set forth herein.

ORIGINAL

1 **THE PARTIES**

2 2. Plaintiff WizKids is a corporation organized and existing under the laws of the
3 State of Delaware and having a place of business at 2002 156th Ave. NE Suite 300, Bellevue,
4 WA 98007.

5 3. Defendant WOTC is a corporation organized and existing under the laws of the
6 State of Washington and having a place of business at 1600 Lind Ave. SW, Suite 400, Renton,
7 WA 98055.

8 **JURISDICTION AND VENUE**

9 4. This is an action for declaratory judgment of patent non-infringement and
10 invalidity. This Court has jurisdiction over the subject matter of this action pursuant to the
11 Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and under the laws of the United
12 States concerning actions relating to patents, 28 U.S.C. §§ 1331 and 1338(a).

13 5. The Court has personal jurisdiction over the parties, and venue in this Judicial
14 District is proper under 28 U.S.C. §§ 1391(b) and (c).

15 **EXISTENCE OF ACTUAL CASE AND CONTROVERSY**

16 6. WOTC is the owner by assignment of United States Patent No. 7,201,374 ("the
17 '374 patent"), entitled "Method and Article of Manufacture for Collectable Game," issued to
18 Tyler Bielman on April 10, 2007. Attached hereto as Exhibit 1 is a true and correct copy of the
19 '374 patent.

20 7. WizKids is a company that develops, markets and sells games, including a game
21 entitled *Pirates of the Spanish Main* and subsequent versions of the game containing the
22 "Pirates" title (collectively referred to herein as "Pirates").

23 8. By letter dated May 19, 2004, WOTC informed WizKids that WOTC owned the
24 patent application identified as U.S. Patent Pub. No. 2004/0084842 A1, and WOTC asserted
25 that WizKids's Pirates game fell squarely within many of the proposed claims of the pending
26 patent application. WOTC warned that when the patent issued, WOTC would have the right to

1 sue WizKids for an injunction and damages. WOTC threatened that it would take legal action
2 against WizKids if or when a patent was allowed if WizKids did not cease and desist selling its
3 Pirates game. WizKids responded to the letter on June 4, 2004, denying that the Pirates game
4 was within the scope of any of the then pending claims of WOTC's patent application.

5 9. On May 21, 2007, in-house counsel for WOTC contacted in-house counsel for
6 WizKids in Bellevue, Washington to inform WizKids that WOTC would issue a press release
7 on May 22 announcing that WOTC had been awarded the '374 patent. She further asserted that
8 although the press release would not expressly mention WizKids's Pirates game, the parties
9 would have to come to an agreement regarding the '374 patent and the Pirates game. WizKids
10 denied, and has consistently denied throughout, that the Pirates game infringes the '374 patent.
11 WOTC offered to enter a litigation "stand still" agreement pursuant to which neither party
12 would commence litigation for three weeks, pending discussions of a resolution of WOTC's
13 position that WizKids's Pirates game infringes the '374 patent.

14 10. On May 22, 2007, WOTC issued its press release, in which it claimed to have
15 pioneered "constructible strategy games," and implied that such games were covered by its
16 patent. Use of the term "constructible strategy games," a trademark used by WizKids to market
17 its games, is on information and belief a reference to WizKids, and it was so understood by the
18 market. Shortly after the press release appeared, WizKids personnel discovered postings on
19 game-related web logs ("blogs") inquiring about the impact of the WOTC patent on WizKids's
20 Pirates game, WizKids received an e-mail inquiry regarding the effect of the WOTC patent on
21 WizKids's Pirates game from a writer for ICV2.com, a public website that is the leading source
22 of information for gaming industry insiders, consulted daily by retailers for breaking news in
23 the gaming industry, and WizKids received multiple telephone calls from other industry
24 participants inquiring about the same issue.

25 11. To date, WizKids has not (1) accepted WOTC's offers to enter a "stand still"
26 agreement, (2) licensed the '374 patent, or (3) ceased making, using, offering for sale or selling

1 the Pirates game. Accordingly, WizKids has a reasonable apprehension that WOTC will bring a
2 lawsuit against WizKids for alleged infringement of the '374 patent.

3 12. WizKids has suffered and will continue to suffer economic injury due to
4 WOTC's continued and persistent threats of patent enforcement and the looming threats of what
5 may happen to WizKids if it does not acquiesce to WOTC's demands.

6 13. There is a substantial and justiciable controversy between WizKids and WOTC
7 as to whether any products made, used, sold, or offered for sale by WizKids infringe any claim
8 of the '374 patent and as to whether the '374 patent is valid.

9 **COUNT I**

10 **DECLARATORY JUDGMENT OF**
11 **NON-INFRINGEMENT OF THE '374 PATENT**

12 14. WizKids reasserts and incorporates herein by reference the allegations in the
13 above paragraphs as though fully set forth herein.

14 15. WizKids has not made, used, offered for sale, sold or imported into the United
15 States any product that infringes any claim of the '374 patent.

16 16. WizKids has not taught others to practice an invention that infringes any claim of
17 the '374 patent.

18 17. WizKids has not aided or abetted others in practicing an invention that infringes
19 any claim of the '374 patent.

20 18. WizKids has not infringed—directly, contributorily, or by inducement—any
21 claim of the '374 patent.

22 **COUNT II**

23 **DECLARATORY JUDGMENT OF**
24 **INVALIDITY OF THE '374 PATENT**

25 19. WizKids reasserts and incorporates herein by reference the allegations in the
26 above paragraphs as though fully set forth herein.

